HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 18, 2013
83rd Legislature, Number 54
The House convenes at 10 a.m.

Seven bills are on the daily calendar for second-reading consideration today. They are analyzed in today's Daily Floor Report and are listed on the following page.

The House will consider a Local, Consent, and Resolutions Calendar today.

The following House committees had public hearings scheduled for 8 a.m.: Defense and Veterans' Affairs in Room E2.012 and Homeland Security and Public Safety in Room E2.010. The following House committees had formal meetings scheduled for 8 a.m.: Appropriations in Room E1.030 and Energy Resources in Room 1W.14 (Agricultural Museum). The Corrections Committee had a formal meeting scheduled for 9 a.m. in Room 3W.9.

The County Affairs Committee has a public hearing scheduled for 10:30 a.m. or on adjournment in Room E2.016. The Ways and Means Committee has a public hearing scheduled for 2 p.m. or on adjournment in Room E2.014.

Bill Callegari
Chairman
83(R) – 54

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Thursday, April 18, 2013
83rd Legislature, Number 54

SUBJECT: TCEQ permitting of greenhouse gas emissions

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 9 ayes — Harless, Márquez, Isaac, Kacal, Lewis, Reynolds, E. Thompson, C. Turner, Villalba

0 nays

WITNESSES: For — Michael Heim, Gas Processors Association; Celina Romero, Texas Pipeline Association; Thomas Sullivan, Zephyr Environmental and greenhouse gas applicant clients; Mark Vickery, Texas Association of Manufacturers; Christina Wisdom, Texas Chemical Council; (*Registered, but did not testify*: Marty Allday, Enbridge Energy; Richard A. (Tony) Bennett; Texas Association of Manufacturers; Anne Billingsley, ONEOK; Jay Brown, Valero; Sabrina Brown, Dow Chemical; Thure Cannon and Patrick Nugent, Texas Pipeline Association; Teddy Carter, Texas Independent Producers and Royalty Owners Association; Elizabeth Castro, LyondellBasell; Sara Cronin, TPC Group; Jim Dow, Pioneer Natural Resources; Liza Firmin, Access Midstream Partners and Chesapeake Energy; Delbert Fore, Enterprise Products; Mark Gipson, Devon Energy; Kinnan Golemon, Shell Oil Co.; Jim Grace, CenterPoint Energy Inc.; Hugo Gutierrez, Marathon Oil; Gilbert Hughes, American Electric Power; Warren Mayberry, DuPont; Mike Meroney, Huntsman Corp., Sherwin Alumina Co.; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum; Bill Oswald, Koch Companies; Gardner Pate, Phillips 66; William W. Phelps, Total Petrochemicals, Inc., Alon USA, Inc.; Patrick Reinhart, El Paso Electric Co.; Mari Ruckel, Texas Oil and Gas Association; Lindsay Sander, Markwest Energy; William Stevens, Texas Alliance of Energy Producers; Julie Williams, Chevron USA, Inc.; Eric Woomer, Samsung Austin Semiconductor)

Against — David Power, Public Citizen

On — Booker Harrison and Mike Wilson, Texas Commission on Environmental Quality; Cyrus Reed, Sierra Club, Lone Star Chapter

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) regulates and

issues permits for federally regulated air emissions, but not for greenhouse gases. The Environmental Protection Agency (EPA) issues permits for emissions of greenhouse gases in Texas.

A contested case hearing is an evidentiary hearing before an administrative law judge in which the parties directly affected by a permit are given the opportunity to dispute it.

DIGEST:

CSHB 788 would allow the TCEQ to issue permits to facilities to emit greenhouse gases, which would be defined as carbon dioxide, methane, nitrous oxide, and certain other chemicals. TCEQ would be required to develop rules to implement a greenhouse gas permitting program and procedures to transition to the TCEQ any applications pending with the EPA. It also would prepare and submit to the EPA for approval program revisions reflecting the state's greenhouse gas permitting program.

The bill would exempt the review of a greenhouse gas permit from the contested case hearing process.

Under Health and Safety Code, sec. 382.0205 (3), titled "special problems related to air contaminant emissions," CSHB 788 also would remove TCEQ authority to control air contaminants specifically to protect against the adverse effects of "climatic changes, including global warming."

TCEQ could impose fees to pay for greenhouse gas permitting only as necessary to cover additional reasonably necessary direct costs associated with issuing the permits.

If authorization to emit greenhouse gases were no longer required under federal law, the TCEQ would repeal any rules adopted under the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 788 would end the inefficient and costly dual processes that facilities must go through when seeking permits to generate greenhouse gases and other air emissions. The current process forces companies to go to EPA's Region 6 office in Dallas for a greenhouse gas permit while simultaneously pursuing a permit from the TCEQ for all other major sources of federally regulated air pollutants. This process creates delay and

adds to the costs for permits.

The EPA began regulating the emission of greenhouse gases nationally under the Clean Air Act in January 2011, and it has authorized states to manage the permitting of greenhouse gas emissions. The TCEQ, which has issued permits for federally regulated air pollution since 1992, has maintained that it does not have the authority to regulate greenhouse gases under current law. CSHB 788 would clarify that the TCEQ had this authority.

The TCEQ issues many permits related to the emissions of air pollution, with most issued in less than 12 months. In contrast, the EPA's time frame for processing greenhouse gas permits has increased to well more than a year. The EPA's Region 6 office in Dallas has a backlog of more than 50 greenhouse gas permit applications from Texas companies and more are expected.

If the TCEQ began permitting emission of greenhouse gases, these reviews could be handled more efficiently and incorporated into the TCEQ's existing air permitting process. The TCEQ also could avoid many of the reviews that take place at the EPA, such as coordinating the issuance of its federal greenhouse gas permits with other federal agencies and conducting endangered species and cultural assessments. These assessments are not required at the state level and further delay the processing of issuing permits for emitting greenhouse gas.

The failure to enact CSHB 788 could lead to the loss of business to neighboring states. All the states surrounding Texas — Arkansas, Louisiana, Oklahoma and New Mexico — issue greenhouse gas permits as part of their state air emissions permitting programs.

CSHB 788 would benefit the construction of natural gas pipelines, processing plants, petrochemical, and other industrial complexes. The existing permitting inefficiencies and regulatory uncertainty put at risk large business investments and force businesses to consider locating new projects elsewhere, potentially harming the state's economy. Already, there are instances in which natural gas produced in Texas is being piped to Louisiana for processing because failure to receive permits in a timely manner has delayed the construction of pipelines and processing facilities. In another example, a company is considering building a $1 billion chemical facility in Texas but has been hampered in raising the capital to

finance the project because of uncertainty over when it can expect to receive a permit from the EPA for emitting greenhouse gases.

CSHB 788 would limit delays in permitting by disallowing contested case hearings involving greenhouse gases. The EPA does not allow contested case hearings as part of its permitting process, and there is no reason for the state to do so. Greenhouse gases associated with a particular permit do not have a localized effect, and there is no need to expose the businesses to needless delays associated with contested case hearings when there is no local affected party.

The bill would remove the TCEQ's authority to regulate air emissions for the purposes of addressing climate change. This change would allow the TCEQ to permit greenhouse gas emissions as a part of its regular permitting review without wading into the larger debate about climate change.

The bill would protect the state if the federal government ruled it would no longer regulate greenhouse gas emissions by requiring the TCEQ to abolish its greenhouse gas permitting program.

CSHB 788 would keep permitting fees reasonable by limiting the fees TCEQ could charge to those necessary and reasonable to cover the direct costs associated with permitting greenhouse gases.

OPPONENTS SAY:

By eliminating the contested case hearings for greenhouse gases, CSHB 788 would deprive the public of an important venue for comment and the opportunity to suggest permit enhancements. Contested case hearings ensure adequate public notice, a public opportunity to review the draft permit, and the right to seek redress in Texas instead of at the federal level. Contested case hearings offer a vehicle for the public to push for innovative technologies and address unintended consequences of a facility. CSHB 788 should be modified to allow for greater participation of the public in greenhouse gas permitting issues.

CSHB 788 should not delete provisions in existing state law, Health and Safety Code, sec. 382.0205 (3), that allow the TCEQ to regulate air emissions to protect against climate change. The vast majority of climate scientists agree that greenhouse gases contribute to climate change, and the state should not back away from this reason for the state to regulate greenhouse gases.

NOTES:

CSHB 788 differs from the bill as introduced by:

- specifying legislative findings;
- authorizing fees only to the extent necessary to cover direct costs associated with administering the greenhouse gas permit program;
- removing the TCEQ's authority to regulate emissions for climate change under Health and Safety Code, sec. 382.0205 (3); and
- exempting greenhouse gas permits from contested case hearing requirements.

The companion bill, SB 536 by Hinojosa, was referred to the Senate Committee on Natural Resources on February 20.

SUBJECT: Administering, monitoring psychotropic medications for foster children

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — Debbie Andolino; Katherine Barillas, One Voice Texas; Vivian Dorsett, Foster Care Alumni of America - Texas Chapter; Mike Foster, TACPA; Cathy Hamilton and Andrea Sparks, CASA; Javier Henderson; Richard Lavallo, Disability Rights Texas; Tyrone Obaseki; Tressa Provost; Kristopher Sharp; Lee Spiller, Citizens Commission on Human Rights; Laquinton Wagner; (*Registered, but did not testify:* John Breeding; Sarah Crockett, Texas Association for Infant Mental Health; Eileen Garcia, Texans Care for Children; Becky Haskin, CASA; Paul Hastings, Texas Home School Coalition; Brett Merfish, Texas Appleseed; Susan Milam, National Association of Social Workers - Texas Chapter; Jim Moore, CCHR; Jessica Sheely, Texas CASA)

Against — None

On — Tina Amberboy, Supreme Court of Texas Children's Commission; Elizabeth "Liz" Kromrei, Department of Family and Protective Services; William Streusand; Eric Woomer, Federation of Texas Psychiatry; (*Registered, but did not testify*: Heather Fazio, Texans for Accountable Government; Michelle Harper, Health and Human Services Commission; Kerry Raymond, Department of State Health Services; James Rogers, DFPS; Andy Vasquez, HHSC)

BACKGROUND: Family Code, ch. 262, authorizes a governmental entity with an interest in a child to file a suit affecting the parent-child relationship or to take possession of a child without a court order in certain situations.

Family Code, ch. 263, governs the review of children under Department of Family Services (DFPS) care, including procedures at permanency and

placement review hearings.

Family Code, ch. 266, governs the medical care and educational services provided to children in foster care, including provisions that require training, judicial review of medical care, and parental notification. It also allows a foster child who is at least 16 years old to seek the court's authorization to consent to medical care and requires DFPS or the private agency providing care to provide information about seeking authorization, informed consent, and the provision of medical care.

On December 1, 2011, the Texas Juvenile Probation Commission (TJPC) and Texas Youth Commission (TYC) were combined into the newly created Texas Juvenile Justice Department (TJJD).

DIGEST:

CSHB 915 would change the requirements for prescribing a psychotropic medication to a foster child and would modify legal and medical oversight of a foster child's medical care.

Definition. The bill would define a psychotropic medication as one prescribed to treat symptoms of psychosis or another mental, emotional, or behavioral disorder by affecting the central nervous system to change behavior, cognition, or affective state. This definition would include:

- psychomotor stimulants;
- antidepressants;
- antipsychotics or neuroleptics;
- agents for control of mania or depression;
- anti-anxiety agents; and
- sedatives, hypnotics, or other sleep-promoting medications.

Informed consent and notification. The bill would define consent procedures for psychotropic medications. Consent by a foster parent or other person authorized to give consent would be valid only if given voluntarily and without undue influence and if the person authorized to give consent had received verbal or written information about the:

- specific condition to be treated;
- expected beneficial effects on that condition from the medication;
- probable health and mental consequences of not consenting;
- probable clinically significant side effects and risks from the

medication;
- generally accepted alternative medications and any non-pharmacological options; and
- reasons the physician recommends proposed treatment.

The consent would need to be signed by both the person authorized to give consent and the prescribing health care provider (or designee), and the completed form would be kept in the child's case file and medical records.

The foster child's authorized consenter would have to ensure the child had an office visit with the prescribing physician at least every 90 days to allow the physician to monitor side effects, determine whether the medication was helping achieve the physician's treatment goals, and decide if continued use of the medication was appropriate.

The bill would require DFPS, at the soonest scheduled meeting, to notify a foster child's parents of any prescription or dosage change of a psychotropic medication.

Medication review. The bill would change the duties of a child's court-appointed representatives in a suit affecting the parent-child relationship. It would require attorneys ad litem and guardians ad litem to review a child's medical care and attempt to determine, in a developmentally appropriate way, the child's opinion on that care. If the child were more than 16 years of age, it would require an attorney ad litem to advise the child of the right to seek the court's authorization to consent to medical care.

At each hearing for a foster child who was prescribed a psychotropic medication, the court would have to be updated on non-pharmacological options provided to child and the dates of office visits with the prescribing physician since the last hearing. At a permanency or placement review hearing, the court would review the child's medical care and determine whether the child was provided an appropriate opportunity to express an opinion on that medical care and, for a child receiving psychotropic medication, whether the child had been provided with non-pharmacological options and had seen the prescribing physician at least once every 90 days.

Training. DFPS would be required to train individuals seeking to become authorized consenters on informed consent for psychotropic medications

and possible non-pharmacological options. Before an individual could consent to medical care for a foster child, that person would have to acknowledge in writing that he or she had received the training and understood the information.

If a child were taking prescription medication, DFPS would be required to include medical care information in a child's transition plan, including information about:

- using the medication;
- resources to assist with medication management; and
- informed consent and the right to seek the court's authorization to consent to medical care at age 16.

Data collection. The bill would require the Health and Human Services Commission (HHSC) to monitor the use of psychotropic medications for foster children dually eligible for Medicaid and Medicare or under DFPS supervision through an interstate agreement.

The bill would replace references to the Texas Youth Commission with the Texas Juvenile Justice Department.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

CSHB 915 would add important protections for foster children prescribed psychotropic medications by improving oversight and accountability, establishing informed consent procedures, and enhancing training requirements.

Some Texas foster children are being over-medicated. Psychotropic medications are powerful drugs with significant side effects, and the number of foster children being prescribed these medications raises serious concerns about possible abuse and long-term consequences. A 2011 study by the U.S. Government Accountability Office (GAO) found that 32 percent of Texas foster children were on psychotropic medications, compared with only 7 percent of non-foster children. The number of very young foster children on these medications, as well as the number of foster children with multiple prescriptions, is also alarming.

CSHB 915 would increase medical and legal oversight, ensuring that these medications were prescribed only when medically necessary, that non-

pharmacological options were considered, and that all individuals, including children, were adequately informed. For example, the bill would require a foster child to have an office visit with the prescribing physician at least once every 90 days, enabling the physician to better evaluate the necessity of the medication and any negative side effects. It also would require the court and court-appointed representatives to seek the child's opinion on the medical care and involve the child in the treatment process.

The bill would add important protections for foster children dually eligible for Medicaid and Medicare or under DFPS supervision through an interstate agreement. HHSC would collect data on these children, enabling the agency to better identify red flags, such as the prescribing of potentially unsafe medications.

Although opponents argue that Texas is already reducing the number of foster children on psychotropic medications, CSHB 915 would help Texas make greater reductions more quickly, while adding important protections for foster children. Additional administrative burdens would be minimal and outweighed by the benefits of enhanced oversight and accountability.

OPPONENTS SAY:

CSHB 915 would be unnecessary because recent reforms are moving Texas in the right direction with respect to children prescribed psychotropic medications. A recent study by the HHSC found the percentage of foster children on psychotropic medications has dropped to 32 percent from 42 percent in 2004, even as the number of foster children has increased. And although Texas has made great progress limiting these medications to medically necessary situations, foster children will probably always have a higher rate of psychotropic medication prescriptions because they often come from traumatic situations involving serious abuse and neglect.

By focusing on psychotropic medications, the bill could place additional administrative burdens on doctors. It is already difficult to find to health care providers to serve this population, and additional regulations could exacerbate this shortage.

NOTES:

The committee substitute made substantial changes to the bill as filed. The original bill was limited to provisions:

- cross-referencing the definition of psychotropic drug to an existing section of the Family Code;

- cross-referencing consent procedures to existing section of the Health and Safety Code;
- requiring DFPS to include medical care information in a foster child's transition plan;
- requiring parental notification for prescription or dosage change of a psychotropic medication;
- requiring an office visit with the prescribing physician at least once every 90 days;
- requiring a court to review a foster child's psychotropic drug prescriptions and determine whether non-pharmacological options were considered; and
- requiring HHSC to collect data on foster children dually eligible for Medicaid and Medicare or under DFPS supervision through an interstate agreement.

According to the Legislative Budget Board, CSHB 915 would cost about $1.1 million in general revenue related funds through the end of fiscal 2014-15 for staffing costs and additional technology. In fiscal years 2016-2018, the cost is estimated to be $567,232 per year in general revenue related funds.

SUBJECT: Removing the State Medical Education Board's statutory authorization

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 9 ayes — Branch, Patrick, Alonzo, Clardy, Darby, Howard, Martinez, Murphy, Raney

0 nays

WITNESSES: None

DIGEST: HB 1061 would repeal the statutory authorization for the State Medical Education Board (SMEB) and the and the State Medical Education Fund (SMEF).

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: HB 1061 would repeal the statute authorizing the obsolete SMEB and SMEF. They were ineffective in their day, and their functions have been transferred to the more efficient Texas Higher Education Coordinating Board and the Office of the Attorney General. The Legislative Budget Board (LBB) and the Sunset Advisory Commission recommended decades ago that they be abolished. HB 1061, along with voter approval of CSHJR 79 by Branch, would remove references to these defunct entities in state law and in the constitution.

Throughout its history, SMEB has had a troubled existence and an unimpressive track record. In 1952, voters amended the constitution to direct the Legislature to create the SMEB and the State Medical Scholarship Fund to issue loans to medical students who agreed to practice in rural areas of Texas. In 1973, the Legislature enacted HB 683 by Heatly, which created the board. In 1987, the LBB reported that only 11 percent of loan recipients since 1973 were practicing in rural Texas counties, and a mere 14 percent of those were in medically underserved areas.

Due to the program's ineffectiveness, no new loans have been issued since

January 1988. That same year, the Sunset Commission recommended that the SMEB be abolished and its functions transferred to the Texas Higher Education Coordinating Board. In 1989, the Legislature enacted SB 457, by C. Parker, which administratively attached the SMEB to the coordinating board. The board has since finished servicing existing loans and has turned all remaining loans over to the attorney general for default collection.

Lawmakers and the coordinating board now use loan repayment programs instead of direct loans to medical students as their primary method of attracting physicians to practice in rural Texas. These programs help already licensed physicians retire their student loan debt through annual payments in return for practicing in rural and medically underserved parts of the state. Unlike the SMEB's loan issuance programs, which often paid to educate students who never honored their agreements to practice in rural Texas, loan repayment programs have the advantage of paying for services already performed. Many of the loans issued by the SMEB have gone into default and have been deemed uncollectable, leaving taxpayers on the hook.

OPPONENTS SAY:

No apparent opposition.

NOTES:

CSHJR 79 by Branch is related legislation that would propose an amendment to eliminate references to the SMEB and the SMEF from the Texas Constitution. It passed the House and was reported engrossed on April 17.

SUBJECT: Stacked sentences for offenses against children, elderly, and the disabled

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody

1 nay — Schaefer

2 absent — Burnam, Toth

WITNESSES: For — Carlos Higgins, Texas Silver-Haired Legislature; Sherri Tibbe; (*Registered, but did not testify:* Dennis Borel, Coalition of Texans with Disabilities; Melody Chatelle, United Ways of Texas; Lon Craft, Texas Municipal Police Association; Catherine Cranston, Adapt of Texas, Personal Attendant Coalition of Texas; Brian Eppes, Tarrant County District Attorney's Office; Bob Kafka, Adapt of Texas; Stephanie LeBleu, Texas Court Appointed Special Advocates; Joy Rauls, Children's Advocacy Centers of Texas, Inc.; Steven Tays, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office)

Against — (*Registered, but did not testify:* Allen Place, Texas Criminal Defense Lawyer's Association)

On — (*Registered, but did not testify:* Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Under Penal Code, sec. 3.03, sentences for convictions of most offenses arising from the same criminal episode and prosecuted in a single action must run concurrently. Sentences for convictions or plea agreements for the following offenses may run concurrently or consecutively:

- intoxication assault or manslaughter;
- online solicitation of a minor;
- continuous sexual abuse of a child;
- indecency with a child;
- sexual assault or aggravated sexual assault;
- incest;

- sexual performance by a child;
- improper photography or visual recording;
- possession or promotion of child pornography;
- trafficking of persons; and
- compelling prostitution.

Additionally, if the judgment in any case contains an affirmative finding that the illegal activity was street-gang related, the sentences may run concurrently or consecutively.

DIGEST:

HB 220 would amend Penal Code, sec. 3.03 to allow concurrent or consecutive sentences for convictions or plea agreements for the offense of causing serious bodily injury or serious mental deficiency, impairment, or injury to a child, elderly person, or disabled person that was punishable as a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000).

The bill would take effect September 1, 2013, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

By expanding the list of offenses for which sentences could be served consecutively, or "stacked," HB 220 would recognize the heinous nature of causing serious injury to a child, elderly person, or disabled person. These crimes are at least as serious as the crimes already on the list.

Current law allows stacking sentences for continuous sexual abuse of a child, but not for continuous physical abuse of a non-sexual nature. HB 220 would allow for appropriate punishments in especially heinous situations, such as a recent case in which a man who repeatedly broke the legs and arms of his children is serving concurrent sentences and will be eligible for parole earlier than he would have been with consecutive sentences.

The bill would give judges a useful tool to help ensure that individuals who committed these crimes remained in prison. Stacking sentences would remain permissive, not mandatory. We entrust judges with discretion in many situations and would benefit from giving them the ability to strengthen sentences when the situation demands it.

With concurrent sentencing for offenses arising out of the same criminal episode, the offender is punished only once, despite having committed

multiple offenses. HB 220 would allow the offender to be punished for each crime, without separate trials that would be a drain on victims and on court resources.

The fiscal note and criminal justice impact statement both indicate that HB 220 would have no significant impact on state or local resources or the workload of correctional agencies.

OPPONENTS SAY:

HB 220 would open the door to uneven punishments. Because consecutive sentencing is always discretionary, this bill could create a situation where the same crimes with the same severity were punished more or less harshly depending on the court and the jurisdiction. Justice should be dispensed evenly, and loosening the sentencing requirements would create more inequity in the justice system.

The Texas Board of Pardons and Paroles is already very diligent in reviewing cases. Even when a person receives concurrent sentences, the board can see that person has multiple convictions and would be less likely to parole the person. Stacking sentences in these cases would not decrease the likelihood of parole being granted because those with concurrent sentences are already less likely to receive parole.

Stacking sentences, as HB 220 would do, would not be an effective deterrent to these crimes. The cost of keeping people imprisoned would divert resources from other important efforts, such as criminal investigations and the probation and parole systems.

NOTES:

In 2011, the House passed a similar bill, HB 1601 by Price, which was placed on the Senate Intent Calendar but not enacted.

SUBJECT: Requiring water utilities and other entities to report a water shortage

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Ritter, Johnson, Ashby, D. Bonnen, Callegari, Keffer, T. King, Larson, Lucio, D. Miller

0 nays

1 absent — Martinez Fischer

WITNESSES: For — (*Registered, but did not testify:* Daniel Gonzalez, Texas Association of Realtors)

Against — (*Registered, but did not testify:* Shanna Igo, Texas Municipal League)

On — Linda Brookins, Texas Commission on Environmental Quality

DIGEST: CSHB 252 would require a water utility and each entity from which the utility was obtaining water or sewer service to project the period for which its water supply would meet its customers' needs and notify the Texas Commission on Environmental Quality (TCEQ) if it expected the water supply to run out within 180 days.

TCEQ would adopt rules to implement CSHB 252 and prescribe the form and content of the required notice.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 252 would keep TCEQ and the public informed of a utility's ability to meet its customers' water consumption needs by mandating that utilities keep accurate and up-to date projections of available water. Accurate water supply data is imperative during times of water scarcity. The current drought, which could last for years, has led to severe declines in aquifer and reservoir levels, compromising water supplies and delivery to several public water systems. Under current law, utilities self-report their water availability to TCEQ on a voluntary basis. CSHB 252 would require the forecasting and reporting of this vital information.

TCEQ is already equipped to monitor and aid utilities that are experiencing emergency water shortage conditions, but under current law the agency can "strongly encourage" but not require public water systems that have less than 180 days of water on hand to provide regular status updates. It is up to the utility to provide that information voluntarily. Last January, the town of Spicewood Beach experienced an emergency water shortage, but by the time it reported the situation to TCEQ the town had less than a 45-day supply of water. This did not provide enough notice for TCEQ and the Emergency Drinking Water Task Force to aid the town in obtaining a new supply of water, leaving the town to rely on water delivery by truck while developing another solution.

CSHB 252 would not place an unreasonable burden on public water utilities because most already keep accurate data of water availability. Compliance with the bill might be more difficult for a utility that did not have access to the necessary information, but these are precisely the utilities that would be most vulnerable if the current drought persists as expected. It is important that all water suppliers have accurate data on water availability in order to weather current and future droughts. State and federal funding sources are available to help eligible utilities make accurate projections on water availability, and technical and record-keeping assistance are also available.

OPPONENTS SAY:

CSHB 252 would impose yet another reporting requirement on public utilities with no commensurate level of compensation for time and resources. Utilities already are required to calculate and report water usage annually to the Texas Water Development Board (TWDB). In addition, utilities must submit a drought contingency plan, a water loss audit, a utility profile, and a water use survey to TCEQ and/or TWDB.

According to the Legislative Budget Board, utilities could incur costs associated with additional reporting requirements and performing a water supply assessment, including costs to hire a hydrologist, engineer, or geologist and to meet other technical needs. Some retail public utilities, especially smaller entities, may not have the resources to manage these costs.

NOTES:

The companion bill, SB 1170 by Hegar, was referred to the Senate Natural Resources Committee on March 12.

The committee substitute differs from HB 252 as introduced by specifying that the bill would apply to an entity supplying wholesale water or sewer service to a utility.

SUBJECT: Defense base development authorities' taxable property

COMMITTEE: Defense and Veterans' Affairs — committee substituted recommended

VOTE: 9 ayes — Menéndez, R. Sheffield, Collier, Farias, Frank, R. Miller, Moody, Schaefer, Zedler

0 nays

WITNESSES: For — Wayne Alexander, Port San Antonio; David Marquez, County of Bexar; (*Registered, but did not testify*: Marshall Kenderdine and Luis Saenz, City of San Antonio; Chris Shields, Greater San Antonio Chamber of Commerce)

Against — None

On — (*Registered, but did not testify*: Chris Shields, Port San Antonio; Tim Wooten, Comptroller of Public Accounts)

BACKGROUND: Local Government Code, ch. 379B authorizes municipalities to create a defense base development authority at a base closed by the Defense Base Closure and Realignment Commission (BRAC).

Tax Code, secs. 11.01 and 21.02 stipulate that tangible property that is temporarily in the state is not subject to taxation.

DIGEST: CSHB 2387 would stipulate that a commercial product being made, assembled, or produced within a defense base development authority's jurisdiction was temporarily within the state for the purposes of Tax Code, secs. 11.01 and 21.02, and therefore exempt.

To qualify for the exemption, the commercial product would have to be made, assembled, or produced by an entity in the manufacturing sector, as defined by the North American Industry Classification System (NAICS). It also would have to meet guidelines established by the county commissioners court under Tax Code, sec. 312.002, which governs the eligibility of a taxing unit to participate in tax abatement and requires the taxing unit to set guidelines before offering the exemption.

Tangible personal property within the authority also would be exempt from taxation if the property owner demonstrated to the tax appraisal district that the property was intended to be attached or incorporated into the commercial product exempted from taxation by the bill.

The bill would take effect January 1, 2014.

SUPPORTERS SAY:

CSHB 2387 would provide communities affected by a military base closure with an economic tool that helps defense base development authorities operating at former military installations attract and keep manufacturing businesses. Manufacturing, which ranges from electroplating and tire retreading to the construction of jet engines, creates high-paying jobs that benefit a region's economy. The bill also would allow Texas to compete with other states that do not assess taxes on certain manufactured goods.

Shuttering a military installation is devastating to a community's economy. CSHB 2387 would help in the transition of jobs and property so that a community once tied economically to a departed military presence could grow its commercial sector. Economic tools to help in this transition are important for communities still recovering from the previous rounds of installation closures. The Pentagon recently included $2.4 billion to implement the base realignment and closure process in a budget proposal, so a tax exemption for certain manufactured goods makes sense as a way to lure investment and boost employment at authorities. This kind of investment would eclipse any projected loss in revenues that resulted from exempting commercial products and their related parts from taxation.

A similar provision in the Tax Code already provides an exemption for watercraft construction, and CSHB 2387 would make that language applicable to commercial products produced or assembled at authorities. The bill would not harm the discretion given to the state's chief appraisers — it merely would clarify the temporal status of manufactured goods at an authority. Appraisers still would have the final say in determining whether tangible property associated with the commercial product was taxable. Furthermore, the bill would grant discretion to the commissioners court in determining whether commercial products manufactured at an authority were eligible for exemption.

OPPONENTS SAY:

CSHB 2387 could result in a loss of revenue to the state and local governments. The Legislative Budget Board (LBB) projected that,

depending on the eligibility criteria established by the commissioners court for the exemption of commercial products, the exemptions permitted under the bill could result in a loss of revenue to the state of about $1.1 million in fiscal 2014-15.

Also, the bill would remove the discretion of local tax appraisers to determine whether a commercial product made, assembled, or produced at an authority was located temporarily in the state and whether it was taxable. Tangible property determined by a chief appraiser to be in the state temporarily already is exempt from taxation, and such decisions should remain in the hands of local appraisal districts.

NOTES:

The committee substitute differs from the bill as introduced in that CSHB 2387 would:

- specify that an eligible commercial product would have to be in the process of being manufactured, assembled, or produced at an authority;
- require the entity producing the commercial product to meet the NAICS definition as a manufacturing entity; and
- require that a commercial product at an authority meet guidelines established by the county commissioners court under Tax Code, sec. 312.002.

The LBB's fiscal note estimates a cost from the bill of $1,074,000 in general revenue through fiscal 2014-15 resulting from property tax revenue loss to local units and to the state through the school funding formula. According to the LBB, this estimate depends on whether the businesses producing the commercial products meet the commissioners court guidelines under Tax Code, sec. 312.002 and whether they met guidelines in the future.

SUBJECT: Electronic service of orders for emergency protection

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody, Schaefer, Toth

0 nays

WITNESSES: For — Rodney Adams, City of Irving Municipal Court; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Deanna L. Kuykendall, Texas Municipal Courts Association; Allen Place, Texas Criminal Defense Lawyers Association)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 17.292 provides for the issuance of orders of emergency protection to defendants by magistrates following arrests for certain offenses involving family violence, sexual assault, aggravated sexual assault, or stalking. Issuance of these orders is mandatory when a family violence offense also involved serious bodily injury to the victim or the use or exhibition of a deadly weapon during the commission of an assault. The order must be served to the defendant in open court.

DIGEST: CSHB 570 would require a magistrate to serve an order of emergency protection issued under Code of Criminal Procedure, art. 17.292 to the defendant in person or electronically. The bill would require magistrates to make a separate record of the service of an order in written or electronic format.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: By allowing for the electronic issuance of protective orders, CSHB 570 would benefit everyone involved in this court process, including magistrates, law enforcement officers, and defendants. Defendants who

receive emergency protective orders are often in jail when the order is issued. Requiring orders to be served in open court means that defendants must be shackled and transported by jail staff, which puts law enforcement officers, court staff, and sometimes the defendants themselves at risk. Allowing these orders to be served electronically would alleviate the safety concerns that are always associated with transportation of detained individuals.

CSHB 570 would allow existing means of electronic communication that link courts and jails for other purposes to be applied to the issuance of orders of protection to defendants who were not physically present before the magistrate. Similar practices in place in some jurisdictions include videoconferencing between courts and jails and e-mailing documents to jail staff to print and deliver to defendants. These means of electronic communication would be permitted under the bill.

Courts choosing to take advantage of CSHB 570 would establish procedures for this type of service and would be required to follow those procedures. The bill would be permissive and would allow courts with these systems in place to take advantage of them when issuing orders for emergency protection. CSHB 570 also would ensure that service of the order was properly completed by requiring the magistrate to make a separate record of the service.

OPPONENTS SAY:

Allowing remote or electronic service of emergency protective orders would create more room for human error in the process. By relying on jail staff to forward the notice to the defendant, more opportunities would arise for the order to be mishandled, misdirected, or fail to reach the defendant.

Requiring the magistrate to make a separate record is a good first step, but the bill also should require a signature or thumbprint from the defendant to ensure successful completion of service. Without such a safeguard, it would be difficult to ensure that the defendant received the order as required by law.

NOTES:

The committee substitute differs from HB 570 as introduced in that it would require that the magistrate make a separate record of the service and specify that the magistrate issue the order.